

## 46 Am. Jur. 2d Judges § 154

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### Judges

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### IX. Disqualification to Act in Particular Case

#### B. Grounds for Disqualification

##### 5. Prior Participation in, Connection with, or Knowledge of the Case or Parties as Grounds for Disqualification

##### c. Prior Participation in or Connection with Case as Attorney as Grounds for Disqualification

## § 154. Canons or rules disqualifying judge for serving as lawyer in "matter in controversy"

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Judges](#)  47(1), 47(2)

### A.L.R. Library

[Prior Representation or Activity as Prosecuting Attorney as Disqualifying Judge from Sitting or Acting in Criminal Case, 85 A.L.R.5th 471](#)

The canons or rules of many states provide that a judge should disqualify him- or herself in a proceeding where the judge knows that he or she has served as a lawyer in the matter in controversy, or the judge knows that a lawyer with whom he or she previously practiced law served during such association as a lawyer concerning the matter.<sup>1</sup> The Code of Judicial Conduct provides that the judge should disqualify him- or herself in any proceeding in which the judge served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;<sup>2</sup> or in which the judge served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;<sup>3</sup> and such rules are embodied in the federal statute regarding the disqualification of judges.<sup>4</sup>

**Observation:**

What constitutes the "matter in controversy" within the meaning of such a rule necessarily depends on the facts. On the one hand it has been said that judges are not disqualified from an action simply because it involves a former client as a party. On the other hand is the proposition that procedurally different proceedings, involving different substantive law applications, can involve the same matter in controversy if the factual occurrence is substantially the same.<sup>5</sup>

**CUMULATIVE SUPPLEMENT**

**Cases:**

Trial judge's previous actions as trial counsel in series of related tobacco cases collectively created well-founded fear that defendant tobacco companies would not receive fair and impartial trial, requiring disqualification; judge had previously appeared as court counsel of record for plaintiffs in 19 cases where tobacco companies were defendants and served as trial counsel in 5 of those cases, in one of 5 cases in which judge had served as trial counsel, he served as co-counsel with the firm representing opposing party in current action, in one of 5 cases in which he had served as trial counsel, jury returned a \$17 million verdict against tobacco companies, including \$11 million in punitive damages, and in judge's previous work as counsel, he had deposed 5 corporate representatives of various tobacco companies including representatives of tobacco companies in current action, which raised possibility that jury could hear from judge as both presiding judge and examining lawyer. [Fla. R. Jud. Admin. 2.330\(d\)](#). [R.J. Reynolds Tobacco Company v. Cuddihee](#), 272 So. 3d 796 (Fla. 1st DCA 2019).

**[END OF SUPPLEMENT]**

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**Footnotes**

- 1 [State ex rel. Corbin v. Superior Court of State of Ariz., In and For Maricopa County](#), 155 Ariz. 560, 748 P.2d 1184 (1987); [Los v. Los](#), 595 A.2d 381 (Del. 1991); [Sharp v. Howard County](#), 327 Md. 17, 607 A.2d 545 (1992); [Matter of Estate of Risovi](#), 429 N.W.2d 404 (N.D. 1988); [In re Wilhite](#), 298 S.W.3d 754 (Tex. App. Houston 1st Dist. 2009).
- 2 A.B.A. Code of Judicial Conduct, Canon 2, Rule 2:11(A)(6)(a).
- 3 A.B.A. Code of Judicial Conduct, Canon 2, Rule 2:11(A)(6)(b).
- 4 § 153.
- 5 [Sharp v. Howard County](#), 327 Md. 17, 607 A.2d 545 (1992).  
A matter in controversy, for purposes of determining whether a judge's prior representation or involvement in an adjudication gives rise to a conflict of interest requiring disqualification, includes any disputed factual allegation that is material to the resolution of a legal issue. [Bullman v. State](#), 2014 MT 78, 374 Mont. 323, 321 P.3d 121 (2014).

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